

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling and)	
Request for Expedited Action on)	NSD File No. L-97-42
July 15, 1997 Order of the Pennsylvania)	
Public Utility Commission Regarding))	
Area Codes 412, 610, 215 and 717)	
)	
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications Act)	CC Docket No. 96-98
of 1996)	
)	

**MOTION FOR RECONSIDERATION BY
THE MAINE PUBLIC UTILITIES COMMISSION**

The Maine Public Utilities Commission (MPUC) requests that the Commission reconsider its September 28, 1998 Memorandum Opinion and Order and Order on Reconsideration (Order) in the above-captioned matter. Specifically, the MPUC requests that the Commission: (1) remove the condition in Paragraph 24 that requires a state commission to decide upon a specific form of area code relief before it is allowed to impose central office code conservation measures; and (2) clarify the authority that state commissions have to order return of central office codes that have been obtained or used in contravention of state regulations.

I. STATES MUST BE ABLE TO IMPOSE CONSERVATION METHODS BEFORE DECIDING WHETHER A NEW AREA CODE IS NEEDED

A. The limitations placed on state commissions will not produce greater numbering uniformity.

In Paragraph 21 of its Order, the Commission states that its rationale for not allowing state commissions to impose number conservation measures before an area code relief decision is made is that doing so could result in “varying and inconsistent regimes” which could interfere with the routing of calls or hamper the industry’s efforts at forecasting and planning for the exhaust of the North American Numbering Plan.¹ The Commission’s ultimate decision, however, will not further that objective.

In Paragraph 24 of the Order, the Commission allows a state to impose number rationing plans and usage thresholds only after the state makes a final area code relief decision, i.e., after a state determines whether and when a new area code is needed and whether it should be implemented through a geographic split or overlay. The Commission fails to explain, however, why there is less of a problem with a lack of uniformity after an area code relief decision is made than there would be before such a decision is made. The MPUC respectfully suggests that there will be no difference in uniformity whether conservation measures are ordered before or after a final decision regarding the implementation of a new area code. There will be, however, a huge difference in societal costs and consumer impacts if states are precluded from imposing conservation methods until after agreeing to implement a new area code, particularly if, as is likely, the new code is implemented sooner than necessary.

¹ The Commission also states that number conservation is not area code relief. Order at ¶ 22. However, the two concepts are inextricably intertwined. Indeed, area code relief may not be necessary if number conservation methods are followed.

B. State commissions must have the authority to order code conservation before implementing area code relief in order to ensure that consumers are not unnecessarily burdened by the improper use of public numbering resources.

The ability to ration codes and engage in other conservation measures before deciding whether and when an additional area code should be implemented is essential to states' abilities to ensure that ratepayers are not unduly burdened by improper use of public numbering resources.

While state commissions should work with NANPA to determine whether central office code conservation measures would, in fact, extend the longevity of an area code, state commissions are in the best position to determine whether such methods should be implemented. Specifically, state commissions are best suited to weigh the benefits associated with implementing conservation methods against the costs, which include both the costs of the measures themselves and the fiscal and societal costs associated with implementation of a new area code.² As the Commission noted in Paragraphs 9 and 21, state commissions have a "unique" understanding and familiarity with local circumstances. Further, state commissions clearly are much closer to the particular needs and concerns of the consumers in their states. Finally, the MPUC has no motivation to use numbering resources in an anti-competitive manner and is, and for two years has been, working hard to ensure the development of local competition in Maine.

The circumstances in Maine provide a good example of why it is important that state commissions have the authority to impose conservation methods before deciding upon a new area code. Specifically, Maine has only one area code, and has fewer than 750,000 active wirelines in service and fewer than 1.2 million people in the entire state. Further, Maine has more than 5.7 million unused numbers, including over 3,016,188 unused numbers within the central office codes

² As the Commission recognizes, there are substantial societal costs when a new area code is implemented and those costs must be considered very carefully by state commissions. Order at ¶ 21, fn 73.

already assigned. Maine also has 935 untainted thousand number blocks which will be available for pooling when it becomes technically feasible. Maine has only one currently operating CLEC.

If Maine is allowed to impose number conservation plans which would delay the need for new area codes until after the advent of number portability³, Maine might never need a new area code, or could at least defer the need for many years. The MPUC should have the authority to protect our consumers and small businesses from the unnecessary expense of an additional area code if a new code is not truly necessary and can be avoided through conservation measures. A rational allocation of numbering resources would benefit both the development of competition and consumers. Requiring the MPUC to move forward with the implementation of a new area code before allowing us to conserve central office codes simply does not make sense.

II. THE ORDER UNNECESSARILY LIMITS STATE DISCRETION TO ENFORCE ITS RULES AND REGULATIONS

In Paragraph 24 of the Order, the Commission states that “state commissions do not have authority to order return of NXX codes or 1,000 number blocks to the code administrator.”

While it appears from the context of the Order that this statement is limited to code conservation-related orders, the language used in the Order is very broad and could be interpreted to mean that a state commission could never order the return of a code. Such a conclusion would unreasonably limit a state’s ability to enforce its own rules and regulations regarding the provision of service within its boundaries. Indeed, the MPUC would not have the power to prevent carriers

³ Such a plan might include: (1) thousand block conservation methods such as sequential use of numbers, preservation of untainted blocks, fill rates for thousand blocks, and shorter time frame forecasts; (2) higher fill rates for central office codes; (3) mandatory participation in central office code utilization studies (COCUS); (4) mandatory reporting of number usage to the commission on a quarterly basis; and (5) limitations on acquiring central office codes where the carrier does not anticipate serving actual customers in that exchange.

who wrongfully obtained or used numbering resources from continuing to use those resources to the detriment of other properly certified and operating carriers.

The Industry Number Committee's Central Office Code Administration Guidelines (Guidelines) relied upon by the Commission do not guarantee an effective, fair code allocation process. The Guidelines were developed by the industry and were never formally approved by the MPUC or the FCC. While the Guidelines state that a carrier must first obtain regulatory authority to serve the area for which a central office code is requested⁴, they also allow carriers to self-certify to the code administrator that they have such authority. When problems arise involving the improper acquisition or misuse of codes, the Guidelines provide a lengthy and convoluted process for resolving those problems.⁵ Matters are referred to appropriate regulatory bodies⁶ only if industry consensus is not reached. While no specific time limits are included in the Guidelines, it appears that a carrier that wrongfully obtained or used a code could continue to do so for months (at least) before the codes are actually reclaimed by the code administrator. Finally, it is clear that the Guidelines were not written to address the problems arising at the state level today relating to Internet service providers, wireless carriers and paging companies.

⁴ Section 4.1.3 requires that an applicant for a central office code be certified to operate in the area for which the code is requested and demonstrate that "all applicable regulatory authority required to provide service" has been obtained.

⁵ See Section 8 of the Guidelines.

⁶ There is some confusion regarding who the "appropriate" regulatory body would be. The Order appears to preclude referral to state commissions and instead looks to NANPA. However, the scope of NANPA's authority is limited by the terms of its contract with NANC which, according to NANPA, does not include an obligation to resolve disputes. Indeed, during a recent Technical Conference in Maine, NANPA stated on the record that it did not have the authority to "police" requirements or "stop line assignments" under the Guidelines. Given these limitations, the FCC should encourage, rather than discourage, state commissions to perform their natural role as dispute arbitrator.

Given the exigencies of the current circumstances regarding numbering resources, state commissions should not be held hostage by an industry-developed process which allows carriers who may well be misusing codes to continue to do so over a long period of time. State commissions are in a much better position than the neutral code administrator or the FCC to determine whether a code holder has the necessary state authority to operate in the exchange and whether the code holder is using codes for a purpose contrary to state regulations regarding the provision of service within the state.

III. PERMITTING STATES TO RECLAIM CODES WILL ENHANCE THE ACCURACY OF CODE EXHAUST FORECASTING AND REDUCE IMPROPER USE OF CODES BY CARRIERS.

Reclamation of improperly obtained or used codes could have a substantial impact on code exhaust forecasts which, in turn, inform a state's decision regarding the need to implement a new area code. Again, circumstances in Maine provide a good example of why state commissions should be allowed to order the return of codes which have been improperly obtained or used. In Maine, an operating LEC has obtained 56 central office codes in areas throughout the state but is only serving a small number of customers who are all located within one exchange.⁷ The LEC's use of the codes enables it to avoid access charges and provide toll free service to the ISPs' subscribers throughout the state. Thus, as many as 53 central office codes (530,000 numbers -- equivalent to more than 2/3 of the existing active wirelines in Maine) are unavailable for assignment to other carriers or new competitors who have (or soon will have) customers in the areas for which they have requested codes. If the MPUC finds that codes were improperly

⁷ The LEC's customers are Internet service providers located in the Portland area who serve subscribers located throughout the state.

obtained or used, it should have the authority to require the return of the codes. The language contained in the Order, however, will likely be used by LECs as a shield against such an action.

The MPUC requests that the Commission clarify the language of Paragraph 24 and specifically delegate any additional authority necessary to enable state commissions to reclaim codes which were obtained or used in violation of state rules, regulations, and policies.

Delegation of such authority will allow states to ensure that numbering resources are available to support the development of competition.

IV. CONCLUSION

For the reasons described above, the MPUC respectfully requests that the Commission strike that portion of its Order which restricts states from imposing number conservation methods until after a final decision is made regarding the implementation of a new area code and specifically delegate the authority for states to reclaim improperly obtained or used codes.

Respectfully,

MAINE PUBLIC UTILITIES COMMISSION

Trina M. Bragdon, Staff Attorney
Maine Public Utilities Commission

Dated: October 30, 1998

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 30th day of October 1998, served a true and correct copy of the foregoing Motion for Reconsideration by the Maine Public Utilities Commission upon the persons and in the manner indicated below:

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